

<b>Subject:</b>	Re: FOIA Control Nos. 2013-021 (Skybridge Spectrum Foundation), 2013-022 (Warren C. Havens)
<b>From:</b>	Warren Havens (warren.havens@sbcglobal.net)
<b>To:</b>	David.Senzel@fcc.gov;
<b>Cc:</b>	rjk@telcomlaw.com; ajc@catalanoplache.com; mjp@catalanoplache.com; jsheldon@fr.com; Patricia.Quartey@fcc.gov; Stephanie.Kost@fcc.gov; Richard.Sippel@fcc.gov; Mary.Gosse@fcc.gov; Pamela.Kane@fcc.gov; brian.carter@fcc.gov; jstobaugh@telesaurus.com;
<b>Date:</b>	Wednesday, November 21, 2012 8:59 AM

corrections below.

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**From:** Warren Havens <warren.havens@sbcglobal.net>  
**To:** David Senzel <David.Senzel@fcc.gov>  
**Cc:** "rjk@telcomlaw.com" <rjk@telcomlaw.com>; "ajc@catalanoplache.com" <ajc@catalanoplache.com>; "mjp@catalanoplache.com" <mjp@catalanoplache.com>; "jsheldon@fr.com" <jsheldon@fr.com>; Patricia Quartey <Patricia.Quartey@fcc.gov>; Stephanie Kost <Stephanie.Kost@fcc.gov>; Richard Sippel <Richard.Sippel@fcc.gov>; Mary Gosse <Mary.Gosse@fcc.gov>; Pamela Kane <Pamela.Kane@fcc.gov>; Brian Carter <brian.carter@fcc.gov>; 'Jimmy Stobaugh' <jstobaugh@telesaurus.com>  
**Sent:** Wednesday, November 21, 2012 8:37 AM  
**Subject:** Re: FOIA Control Nos. 2013-021 (Skybridge Spectrum Foundation), 2013-022 (Warren C. Havens)

Mr. Senzel,

I submit several requests below.  
This is also part of Requestors response due this Friday.

For reasons given below, Requestors' position is that the subject FOIA Reequets should be timely processed and decided upon, without delays or blocking by the concerns and positions I outline in the Background section below that other persons expressed at the prehearing of yesterday.

#### Background

At yesterday's prehearing in docket 11-71 (revocation and sanctions Hearing as to Maritime), Mr. Keller for Maritime, Pinnacle counsel (Mr. Catalano or another attorney: I do not recall), Ms. Kane for the Enforcement Bureau (EB) and Judge Sippel discussed this FOIA matter. To a limited extent, I was permitted to participate also. The transcript will provide details of the following, which I believe are materially correct (the persons copied here can, of course, submit different recollections if they have any):

- As I recall, these three attorneys sought an order from Judge Sippel that restricts the EB from providing to your Office of General Counsel ("OFC") the subject FOIA records ("Records") under the subject FOIA requests ("Requests"), on the grounds that the Records are not agency records as meant under FOIA.

- As I also recall that they (at least Mr. Keller and Pinnacle counsel) believe the subject FOIA requests are "Havens" (the undersigned) "end runs," around the subject Protective Order ("PO"), and improperly delay the Hearing.

- They appear to have argued that since the Requestors, via past counsel, are parties to the PO, as are they, that this imposes a contract or other waiver or bar of FOIA rights to seek the Records. (It may be, on the other hand, a contract bar as to their arguments, in as much as *the PO, in several places, refers to use of FOIA with regard to records under the PO, that include the Records at issue.* However, as indicated below, I believe the Commission has disposed of their argument on other grounds.)

At this prehearing yesterday, Counsel that had just commenced assisting certain interests I represent in this Hearing, James Ming Chen, advocated to the Judge that he discuss the above-outlined matter with OGC, and I then advocated to the Judge that the adverse parties confer on this matter with me and my counsel. However, my suggestion was not responded to with any substance.

*As I recall-- (others may correct me if they believe I am wrong)-- the Judge ruled from the bench that the EB is ordered to not provide the subject Records to OGC. As I recall, this is to be make retroactive.*

I attended this prehearing conference yesterday by telephone. The Judge decided to cut off my phone participation at the time that Mr. Chen had to depart his attendance by telephone (after over several hours of the prehearing). I do not know what discussion took place after that time, including as to this FOIA matter, which I believe is a restricted proceeding (see item '(2)' below).

#### Requests, and Requestors' Position

For the two Requestors, I ask your office, OGC, including under FCC rule sections 1.4 and 1.2, to please determine and direct the parties as to the following. I also state below the position of Requestors: this is part of our response due this Friday.

**(1)** (a) Are the subject Requests for the Records, requests for Commission records (agency records and mean under FOIA), as, in my view, was found in FCC 12-35 (see below), and thus subject to processing by OGC as you have proceeded with, or (b) are you mistaken and the attorneys described in the Background above correct? (This question does not go to the merits as to whether any of the requested Records should be released under FOIA.)

Requestors' position is that '(a)' is correct, including for the following reasons:

This Hearing began with the OSC-HDO FCC 11-64, the public version of which has many "redacted" parts: these redactions are reflected in FOIA requests and decisions including FCC 12-35, in which the Requestors are involved as was Maritime and the EB. (For reasons I have previously stated to OGC, I expect that these decisions will be appealed to a US District Court in the time limits

permitted.)

FCC 12-35 provided (emphasis added):

18. ...[T]he Commission's discovery rules generally require parties seeking Commission records to file a FOIA request,<sup>48</sup> the FOIA provides no mechanism for the release of FOIA-exempt documents to selected persons under a protective order, because disclosure under the FOIA is effectively disclosure to the public at large.<sup>49</sup> The release of documents to the parties to hearing proceedings subject to a protective order is authorized by a separate provision that gives the presiding judge authority to control discovery.<sup>50</sup> Thus, to the extent that Skybridge seeks material that would **not** be released under the FOIA, it must proceed under the terms of the presiding judge's protective order.

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<sup>48</sup> See 47 C.F.R. § 1.325(b).

The subject Requests are simple FOIA requests: there is nothing within them that are "end runs" around the PO, or that "seeks material that would not be released under FOIA" including materials that are, in fact, properly designated as confidential or highly confidential under the PO. The PO commences in ¶ 1 (emphasis added):

The Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information or Highly Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. 5 0.442.

The PO further states:

d. Confidential Information. "Confidential Information" means information, whether in oral or written form, so designated by a Designating Party upon a good faith determination that such information constitutes trade secrets or commercial or financial information privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. 5 552(b) (4) or any other bona fide claim of right or privilege.

(The "Highly Confidential Information" definition commences with the above definition of "Confidential Information.")

"Confidential Information" and "Highly Confidential Information" as defined in the PO (which Maritime, Pinnacle and the EB signed, at some point in time, I understand), is not defined to mean any information labelled as such, but information "so designated... upon a good faith determination that such information" is within Exemption 4 of FOIA or other bonafide legal claim of confidentiality. That designation may be tested under FOIA, as indicated in the PO ¶1 and rule §1.325, but so tested or not, the PO does not create a waiver or bar of any citizen's FOIA rights.

The subject Requests are simple, proper FOIA requests, in accord with FCC 12-35, by the Commission. There is nothing in the FOIA statute, FCC rule § 1.325, or the PO to the contrary. That a person is in a FCC proceeding (or was in one: the Judge removed my pro se party rights in this Hearing), does not act as a waiver or divest the citizen of rights under FOIA.

(2) Is this proceeding under the subject Requests a restricted proceeding subject to ex parte rules?

If OCG finds, as I believe, the answer to be "yes," then I request copies of all ex parte communications on this matter, that involves OCG, EB, Judge Sippel's office and any other part of the FCC. I have made no such ex parte presentations.

While ex parte rules list FOIA requests as under permit but disclose proceedings, it appears to me, for Requestors, that when the FOIA requests involves records submitted to the FCC under claims of confidentiality, and the submitting party or parties opposes the subject request, as in this case, then a restricted proceeding is created.

Sincerely,  
/s/  
Warren Havens  
for each Requestor

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**From:** Warren Havens <warren.havens@sbcglobal.net>  
**To:** David Senzel <David.Senzel@fcc.gov>; 'Jimmy Stobaugh' <jstobaugh@telesaurus.com>  
**Cc:** "rjk@telcomlaw.com" <rjk@telcomlaw.com>; "ajc@catalanoplache.com" <ajc@catalanoplache.com>; "mjp@catalanoplache.com" <mjp@catalanoplache.com>; "jsheldon@fr.com" <jsheldon@fr.com>; Patricia Quartey <Patricia.Quartey@fcc.gov>; Stephanie Kost <Stephanie.Kost@fcc.gov>; Pamela Kane <Pamela.Kane@fcc.gov>  
**Sent:** Monday, November 19, 2012 12:58 PM  
**Subject:** Re: FOIA Control Nos. 2013-021 (Skybridge Spectrum Foundation), 2013-022 (Warren C. Havens)

Received, thank you.

W. Havens  
for each Requestor

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**From:** David Senzel <David.Senzel@fcc.gov>  
**To:** 'Jimmy Stobaugh' <jstobaugh@telesaurus.com>  
**Cc:** "rjk@telcomlaw.com" <rjk@telcomlaw.com>; "ajc@catalanoplache.com" <ajc@catalanoplache.com>; "mjp@catalanoplache.com" <mjp@catalanoplache.com>; "jsheldon@fr.com" <jsheldon@fr.com>; Patricia Quartey <Patricia.Quartey@fcc.gov>; Stephanie Kost <Stephanie.Kost@fcc.gov>; Pamela Kane <Pamela.Kane@fcc.gov>; Warren Havens <warren.havens@sbcglobal.net>  
**Sent:** Monday, November 19, 2012 12:51 PM  
**Subject:** RE: FOIA Control Nos. 2013-021 (Skybridge Spectrum Foundation), 2013-022 (Warren C. Havens)

Extension granted until November 23, 2012.

David S. Senzel

-----Original Message-----

From: Jimmy Stobaugh [mailto:[jstobaugh@telesaurus.com](mailto:jstobaugh@telesaurus.com)]

Sent: Monday, November 19, 2012 3:33 PM

To: David Senzel

Cc: '[rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)'; '[ajc@catalanoplache.com](mailto:ajc@catalanoplache.com)'; '[mjp@catalanoplache.com](mailto:mjp@catalanoplache.com)'; '[jsheldon@fr.com](mailto:jsheldon@fr.com)';

Patricia Quartey; Stephanie Kost; Pamela Kane; Warren Havens

Subject: Re: FOIA Control Nos. 2013-021 (Skybridge Spectrum Foundation), 2013-022 (Warren C. Havens)

Mr. Senzel,

The undersigned parties (the "Requestors") hereby request an extension of time to file their reply to the responses filed regarding FOIA Control Nos. 2013-021 and 2012-022. Expedited action is requested given the filing deadline of today.

Extension requested: Until Friday, November 23, 2012. Or in the alternative, until Wednesday, November 21, 2012.

If no extension is granted, then Requestors request that they be allowed to file their reply today via email to your attention at [david.senzel@fcc.gov](mailto:david.senzel@fcc.gov) prior to 12:00am EST, followed by a hard copy to be filed with the Commission's Secretary on November 20, 2012, and service copies also mailed to the responding parties on November 20, 2012.

If an extension is granted, then Requestors make the same request as immediately above: that they can file their reply via email prior to 12:00am EST on the due date, followed by hard copy service the next day.

Reasons for grant:

1. Last week, Mr. Warren Havens, one of Requestors and President of Skybridge Spectrum Foundation, had to attend the bankruptcy hearing of Maritime Communications/Land Mobile LLC in Mississippi. The hearing lasted 3 days. Mr. Havens also spent two days in travel time. Thus, Mr. Havens had limited time to attend to other matters, including this FOIA proceeding.

2. There is a prehearing conference tomorrow regarding the FCC hearing

under Docket No. 11-71. Requestors have to prepare for that hearing today, as was partly discussed with Ms. Pamela Kane of the Enforcement Bureau earlier today (copied here). Thus, Requestors have limited time today to finish their reply before the current deadline.

3. As reflected in your email below of 11/14/12, the FCC has extended its response date by two weeks. Thus, the FCC has additional time to review Requestors' reply.

4. It is in the public interest to grant this brief, additional extension of time since it will allow Requestors sufficient additional time to finish their review of the responses and provide a more full and complete reply.

Requestors will be giving oral notice of the filing of this extension request to the responding parties' legal counsel (copied here), as required by rule Section 1.46.

Sincerely,

Jimmy Stobaugh,  
On behalf of Requestors:  
Warren Havens, Individual and  
Skybridge Spectrum Foundation

Cc: Warren Havens

On 11/15/12 5:58 AM, "David Senzel" <[David.Senzel@fcc.gov](mailto:David.Senzel@fcc.gov)> wrote:

>Dear Mr. Havens,

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>We took the extension because of the need to review the confidentiality  
>of the large volume of records involved and the need to coordinate  
>between different bureaus and offices.

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>The extension has no effect on the response date.

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>David S. Senzel

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>From: Warren Havens [[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net)]  
>Sent: Wednesday, November 14, 2012 7:52 PM  
>To: David Senzel; 'Jimmy Stobaugh'  
>Cc: '[rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)'; '[ajc@catalanoplache.com](mailto:ajc@catalanoplache.com)';  
>'[mjp@catalanoplache.com](mailto:mjp@catalanoplache.com)'; '[jsheldon@fr.com](mailto:jsheldon@fr.com)'; Patricia Quartey; Stephanie  
>Kost  
>Subject: Re: FOIA Control Nos. 2013-021 (Skybridge Spectrum Foundation),  
>2013-022 (Warren C. Havens)

>  
>Please let me know the the reason under this rule?  
>  
>Also, if you are taking more time, then what is the due date for  
>Requesters responses to the statements of the 3 entities (PSE, MCLM and  
>Pinnacle, as I recall).

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>\_\_\_\_\_  
>From: David Senzel <[David.Senzel@fcc.gov](mailto:David.Senzel@fcc.gov)  
>To: 'Warren Havens' <[warren.havens@sbcglobal.net](mailto:warren.havens@sbcglobal.net)>; 'Jimmy Stobaugh'  
><[jstobaugh@telesaurus.com](mailto:jstobaugh@telesaurus.com)>  
>Cc: "'[rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)'" <[rjk@telcomlaw.com](mailto:rjk@telcomlaw.com)>; "'[ajc@catalanoplache.com](mailto:ajc@catalanoplache.com)'"  
><[ajc@catalanoplache.com](mailto:ajc@catalanoplache.com)>; "'[mjp@catalanoplache.com](mailto:mjp@catalanoplache.com)'"  
><[mjp@catalanoplache.com](mailto:mjp@catalanoplache.com)>; "'[jsheldon@fr.com](mailto:jsheldon@fr.com)'" <[jsheldon@fr.com](mailto:jsheldon@fr.com)>; Patricia  
>Quartey <[Patricia.Quartey@fcc.gov](mailto:Patricia.Quartey@fcc.gov)>; Stephanie Kost  
><[Stephanie.Kost@fcc.gov](mailto:Stephanie.Kost@fcc.gov)>  
>Sent: Wednesday, November 14, 2012 12:34 PM  
>Subject: FOIA Control Nos. 2013-021 (Skybridge Spectrum Foundation),  
>2013-022 (Warren C. Havens)

>  
>This is to inform you that the Commission is taking a 10 day extension of  
>the due date for these FOIA requests under 47 C.F.R. § 0.461(g).

>  
>David S. Senzel  
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><<https://newwebmail.fcc.gov/owa/UrlBlockedError.aspx>>

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